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CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit Corporation,

15 Plaintiff,

16 v.

17 COUNTY SANITATION DISTRICT NO.
18 2-3 OF SANTA CLARA and DOES 1 -10,
19 Inclusive,

20 Defendants

CASE NO. 3:12-cv-02375 LB

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is P.O. Box 14426, Santa Rosa, CA 95402. On the date set forth below, I served the following described document(s):

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean Water Act 33 U.S.C. § 1251 *et seq*; Federal Resource Conservation and Recovery Act 42 U.S.C. § 6901 *et seq*.)

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

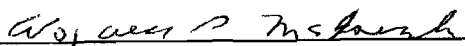
Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on June 4, 2012 at Santa Rosa, California.


Wojciech P. Makowski

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FILED E-filing
MAY 10 2012

RICHARD W. WIERING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER WATCH, a non-profit Corporation,
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16

Plaintiff

v.

17 COUNTY SANITATION DISTRICT NO.
18 2-3 OF SANTA CLARA and DOES
19 1-10, Inclusive,

Defendants

CV 12 2375
**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
CIVIL PENALTIES, RESTITUTION
AND REMEDIATION**
(Environmental -
Clean Water Act 33 U.S.C. § 1251, *et seq.*;
Federal Resource Conservation and
Recovery Act 42 U.S.C. § 6901, *et seq.*)

20 NOW COMES Plaintiff NORTHERN CALIFORNIA RIVER WATCH, a non-profit
21 Corporation, ("RIVER WATCH") by and through its attorneys, and for its Complaint against
22 Defendants COUNTY SANITATION DISTRICT NO. 2-3 OF SANTA CLARA and DOES 1-
23 10, Inclusive, ("DEFENDANT") states as follows:

24 I. NATURE OF THE CASE

25 1. This is a citizen's suit for relief brought by RIVER WATCH under the Federal
26 Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251
27 *et seq.*, specifically Section 505, 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to
28 stop DEFENDANT from repeated and ongoing violations of the CWA. These violations are
detailed in the Notice of Violations and Intent to File Suit dated January 23, 2012 ("CWA
Notice") made part of this pleading and attached hereto as EXHIBIT A.

1 2. RIVER WATCH alleges DEFENDANT is routinely violating the CWA, the
2 Regional Water Quality Control Board's Water Control Plan ("Basin Plan"), Environmental
3 Protection Agency ("EPA") regulations codified in the Code of Federal Regulations, and toxics
4 standards promulgated by the State Water Resources Control Board in the course of
5 DEFENDANT'S operation of its sewage collection system, as described in the CWA Notice.

6 3. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard
7 to public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in
8 pertinent part:

9 *Public participation in the development, revision, and enforcement of any*
10 *regulation, standard, effluent limitation, plan or program established by the*
11 *Administrator or any State under this chapter shall be provided for,*
12 *encouraged, and assisted by the Administrator and the States.*

13 4. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future
14 violations, the imposition of civil penalties, and other relief for DEFENDANT'S violations of
15 the CWA's prohibition against discharging a pollutant from a point source to waters of the
16 United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. §
17 1365(f).

18 5. This is also a citizen's suit brought against DEFENDANT under the citizen suit
19 enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et*
20 *seq.*, ("RCRA"), specifically RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) and RCRA §
21 4005, 42 U.S.C. § 6945, to stop DEFENDANT from repeated and ongoing violations of the
22 RCRA. These violations are detailed in the Notice of Violations and Intent to File Suit dated
23 January 23, 2012 ("RCRA Notice") a copy of which is attached hereto as EXHIBIT B and made
24 part of these pleadings.

25 6. RIVER WATCH contends DEFENDANT is routinely violating the RCRA's
26 regulatory mandates applicable to hazardous or solid wastes by causing untreated sewage, a
27 hazardous waste under the RCRA, to be discharged or deposited where it is or probably or will
28 be discharged into waters of the State, thereby creating or threatening to create, conditions of
pollution or nuisance. (42 U.S.C. § 6972(a)(1)(A)). Further, that DEFENDANT is routinely

1 violating the RCRA's prohibition against creating an imminent and substantial endangerment
2 to human health and the environment by the operation of its sewage collection system, which
3 has caused contamination of soil, groundwater and surface water with fecal coliform and other
4 pathogens, (42 U.S.C. § 6972(a)(1)(B)).

5 7. RIVER WATCH alleges DEFENDANT's mishandling of wastes in violation of
6 Subchapter C of THE RCRA has created and is creating an imminent and substantial
7 endangerment to human health or the environment. RIVER WATCH alleges violations of
8 Subchapter C with regard to both a violation of a permit, standard, regulation, condition,
9 requirement, prohibition or order effective under the RCRA (including California Title 22), as
10 well as violations creating imminent and substantial endangerment to human health or the
11 environment.

12 8. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), permits citizen suits to enjoin
13 pollution which creates or has the potential to create an imminent and substantial endangerment
14 to human health or the environment. RCRA provides for injunctive relief pursuant to RCRA §§
15 3008(a) and 7002(a), 42 U.S.C. §§ 6928(a) and 6972(a).

16 9. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future harm
17 and other relief for DEFENDANT'S alleged violations of the RCRA's prohibition against
18 creating an imminent and substantial endangerment to human health or the environment.

19 II. PARTIES

20 10. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit,
21 public benefit corporation duly organized under the laws of the State of California, with
22 headquarters and main office located in the City of Sebastopol, California. RIVER WATCH is
23 dedicated to protect, enhance and help restore the surface and subsurface waters of Northern
24 California. Its members live in Northern California including the City of Santa Clara where the
25 subject sewer collection system under DEFENDANT's operation and/or control is located.

26 11. Members of RIVER WATCH live nearby to waters affected by DEFENDANT's
27 illegal discharges as alleged in this Complaint. Said members have interests in the watersheds
28 identified in the CWA Notice and this Complaint, which interests are or may be adversely

1 affected by DEFENDANT's alleged violations. Said members use the effected waters and
2 effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking,
3 photography, nature walks, religious, spiritual and shamanic practices, and the like.
4 Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and
5 interference with the interests of said members.

6 12. RIVER WATCH is informed and believes and on such information and belief
7 alleges that Defendant COUNTY SANITATION DISTRICT NO. 2-3 OF SANTA CLARA is
8 now and was at all times relevant to these proceedings, a public entity, governed by the Santa
9 Clara County Board of Supervisors, with administrative offices located at 20833 Stevens Creek
10 Blvd. Suite 104 Cupertino, California.

11 13. RIVER WATCH is informed and believes and on such information and belief
12 alleges that Defendant DOES 1 - 10, Inclusive, respectively, are persons, partnerships,
13 corporations and entities, who are, or were, responsible for, or in some way contributed to, the
14 violations which are the subject of this Complaint or are, or were, responsible for the
15 maintenance, supervision, management, operations, or insurance coverage of the sewage
16 treatment and collection facilities and operations which are the subject of this Complaint. The
17 names, identities, capacities, and functions of Defendants DOES 1 - 10, Inclusive are presently
18 unknown to RIVER WATCH, which shall seek leave of court to amend this Complaint to insert
19 the true names of said DOES Defendants when the same have been ascertained.

20 III. JURISDICTIONAL ALLEGATIONS

21 14. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the
22 CWA, 33 U.S.C. § 1365(a)(1), which states in part,

23 "any citizen may commence a civil action on his own behalf against any
24 person . . . who is alleged to be in violation of (A) an effluent standard or
25 limitation . . . or (B) an order issued by the Administrator or a State with
26 respect to such a standard or limitation." For purposes of Section 505, "the
27 term 'citizen' means a person or persons having an interest which is or may be
28 adversely affected."

15. Members and supporters of RIVER WATCH reside in the vicinity of, derive
livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy

1 and benefit from the waterways and associated natural resources into which DEFENDANT
2 discharges pollutants as alleged in this Complaint, or by which DEFENDANT's operations
3 adversely affect their interests, in violation of CWA § 301(a), [33 U.S.C. § 1311(a),] CWA §
4 505(a)(1), [33 U.S.C. § 1365(a)(1)] and CWA § 402, [33 U.S.C. § 1342]. The health, economic,
5 recreational, aesthetic and environmental interests of RIVER WATCH and its members may be,
6 have been, are being, and will continue to be adversely affected by DEFENDANT's unlawful
7 violations as alleged herein. RIVER WATCH and its members contend there exists an injury
8 in fact to them, causation of that injury by DEFENDANT's complained of conduct, and a
9 likelihood that the requested relief will redress that injury.

10 16. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), notice
11 of the CWA violations alleged in this Complaint was given more than sixty (60) days prior to
12 commencement of this lawsuit, to: (a) DEFENDANT, (b) the United States EPA, Federal and
13 Regional, and (c) the State of California Water Resources Control Board.

14 17. Pursuant to Section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), a copy of this
15 Complaint has been served on the United States Attorney General and the Administrator of the
16 Federal EPA.

17 18. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in
18 this District as the sewage collection and treatment facilities under DEFENDANT's operation
19 and/or control, and the watersheds and lands where illegal discharges occurred which are the
20 source of the violations complained of in this action, are located within this District.

21 19. Subject matter jurisdiction is further conferred upon this Court by RCRA §
22 7002(a)(1), 42 U.S.C. § 6972(a)(1), which states in part,

23 “..any person may commence a civil action on his own behalf (A) against any
24 person ... who is alleged to be in violation of any permit, standard, regulation,
25 condition requirement , prohibition or order which has become effective
26 pursuant to this chapter, or (B) against any person ...who has contributed or who
is contributing to the past or present handling, storage, treatment, transportation
or disposal of any solid or hazardous waste which may present an imminent and
substantial endangerment to health or the environment.”

20. The basis for assignment of this case to the Northern District of California, pursuant to RCRA § 7002(a)&(b), 42 U.S.C. §§ 6972(a)&(b), is that the DEFENDANT's facilities for the collection and conveying of domestic and commercial sewage, operation and/or control, and where RIVER WATCH alleges illegal discharges occurred, which are the source of the violations complained of in this Complaint and in the RCRA Notice are located within this District.

21. Pursuant to Subtitle C of RCRA (subchapter 111,42 U.S.C. § 6921 et seq.), RIVER WATCH gave notice of the RCRA violations alleged in this Complaint prior to the commencement of this lawsuit to: (a) DEFENDANT, (b) the United States EPA, Federal and Regional,(c) the State of California Water Resources Control Board, and (d) the State of California Integrated Waste Management Board.

IV. GENERAL ALLEGATIONS

RIVER WATCH incorporates by reference all the foregoing as though the same were separately set forth herein.

22. DEFENDANT's service area is located within two unincorporated areas that are surrounded by the City of San Jose. DEFENDANT provides sanitary sewer services to approximately 8 square miles. DEFENDANT's wastewater collection system collects and transports wastewater flows to the treatment plant through a system of sanitary sewer pipelines consisting of approximately 90 miles of sewer lines and 7,000 connections. Wastewater that is collected within the District flows to the City of San Jose's facilities for treatment and disposal. DEFENDANT contracts with the City of San Jose and pays its proportionate cost for use of the City-owned sewer lines between DEFENDANT's District and the treatment plant, and for the treatment and disposal of waste.

23. Numerous sewer system overflows (SSOs) from DEFENDANT's collection system are documented in Regional Water Quality Control Board ("RWQCB") records and in the California Integrated Water Quality System ("CIWQS") reporting system, a number of which reached storm drains which discharge into waters of the United States, in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United

1 States without a National Pollution Discharge Elimination System ("NPDES") permit, CWA §
2 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

3 24. SSOs from DEFENDANT's wastewater collection system caused by blockages
4 and inflow and infiltration ("I/I") of rainwater and groundwater result in the discharge of raw
5 sewage into gutters, canals and storm drains which discharge to nearby surface waters such as,
6 Coyote Creek, Guadalupe River and South San Francisco Bay, all waters of the U.S., in violation
7 of the CWA's prohibition with regard to discharging a pollutant from a point source to waters
8 of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33
9 U.S.C. § 1365(f).

10 25. RIVER WATCH alleges collection system overflows caused by underground
11 leakage ("exfiltration") from DEFENDANT's structurally defective sewer pipelines result in the
12 discharge of raw sewage to nearby surface waters via hydrologically connected groundwater,
13 in violation of the CWA's prohibition with regard to discharging a pollutant from a point source
14 to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and
15 33 U.S.C. § 1365(f).

16 26. DEFENDANT has no NPDES Permit regulating the discharges from its sewage
17 collection facilities. All discharges to navigable waters from point sources without an NPDES
18 Permit are a violation of the CWA.

19 27. DEFENDANT's operation of its sewage collection system has caused
20 contamination of soil, groundwater, surface waters and residential areas with human pathogens
21 which contamination presents an imminent and substantial endangerment to human health and
22 the environment. DEFENDANT owns and is responsible for the maintenance of its sewer
23 pipelines which have contributed to the transportation, storage, and disposal of the sewage
24 wastes as described in the RCRA Notice. The sewage stored and conveyed by the
25 DEFENDANT's collection system is a solid or hazardous waste under the RCRA.
26 DEFENDANT is a past and present transporter, owner and operator of facilities which store said
27 solid wastes in the DEFENDANT's sewer pipelines and pump stations. DEFENDANT's failure
28

1 to adequately maintain its collection system has created and is creating an imminent and
2 substantial endangerment to human health or the environment - 42 U.S.C. § 6972(a)(1)(B).

3 28. All illegal discharges and activities complained of herein occur in the waterways
4 identified in this Complaint and in the CWA Notice and RCRA Notice, all of which are waters
5 of the United States, as well as at the locations identified in detail in the CWA Notice.

6 29. The RWQCB has determined that the watershed areas and affected waterways
7 identified in the CWA Notice the RCRA Notice and this Complaint are beneficially used for
8 drinking water, water contact recreation, non-contact water recreation, fresh water habitat,
9 wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning,
10 industrial service supply, navigation, and sport fishing.

11 **V. STATUTORY AND REGULATORY BACKGROUND**

12 30. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of
13 pollutants from a "point source" into the navigable waters of the United States, unless such
14 discharge is in compliance with applicable effluent limitations as set by the EPA and the
15 applicable State agency. These limits are to be incorporated into a NPDES permit for that point
16 source specifically. The effluent discharge standards or limitations specified in a NPDES permit
17 define the scope of the authorized exception to 33 U.S.C. § 1311(a), such that violation of a
18 permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the
19 CWA. Additional sets of regulations are set forth in the Basin Plan, California Toxics Plan, the
20 Code of Federal Regulations and other regulations promulgated by the EPA and the State Water
21 Resources Control Board. Section 301(a) of the CWA prohibits discharges of pollutants or
22 activities not authorized by, or in violation of an effluent standard or limitation or an order issued
23 by the EPA or a State with respect to such a standard or limitation including a NPDES permit
24 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The wastewater collection
25 system piping and sewer lines owned and operated by DEFENDANT are point sources under
26 the CWA.

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31. The affected waterways detailed in this Complaint and in the CWA Notice are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits, subject to specified conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

33. DEFENDANT has no NPDES Permit for discharging pollutants to waters of the United States. All unauthorized point source discharges to waters of the United States are illegal. DEFENDANT's sewer pipelines are point sources. Discharges from these point source via tributary ground waters to waters of the United States, without a NPDES Permit, are illegal.

34. RCRA Section 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person who violates a PERMIT, STANDARD or REGULATION pursuant to RCRA. DEFENDANT, by its continuing operation of an ageing sewage collection system with many structurally damaged and deteriorated sewer pipelines, has caused untreated sewage, a hazardous waste under the RCRA, to be discharged to soil and groundwater in violation of regulations regarding the use and disposal of hazardous wastes. [RCRA Section 3004 (d), 42 U.S.C. §6924(d)] , (42 U.S.C. § 6972(a)(1)(A)).

35. RCRA Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) permits an action against any person who has contributed or who is contributing to the past or present handling of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. DEFENDANT has routinely collected, stored and conveyed untreated sewage, a hazardous waste under RCRA, in structurally damaged and deteriorated sewer pipelines which caused said hazardous waste to be discharged or deposited where it is or probably or will be discharged into waters of the State, thereby creating or threatening to create, conditions of pollution or nuisance, (42 U.S.C. § 6972(a)(1)(B)).

VI. DEFENDANT'S VIOLATIONS

RIVER WATCH incorporates by reference all the foregoing as though the same were separately set forth herein.

36. RIVER WATCH alleges DEFENDANT's point source discharges not regulated by a NPDES permit violate the CWA's prohibition against discharge of pollutants from a point source without a NPDES permit. The violations are established in the RWQCB's files for DEFENDANT's sewage collection system, as well as in studies conducted by DEFENDANT in compliance with orders from regulatory agencies. The enumerated violations are detailed in the CWA Notice designating the section of the CWA violated by the described activity.

37. The location of the discharges are the discharges points as described in the CWA Notice and in this Complaint.

38. DEFENDANT'S discharges to soil and groundwater violate the RCRA's regulations regarding the storage and disposal of hazardous wastes. The violations are established in files of the RWQCB for DEFENDANT's sewage collection system , as well as in studies conducted by DEFENDANT in compliance with orders from regulatory agencies

39. DEFENDANT's discharges to soil and groundwater violate the RCRA's prohibition against creating an imminent and substantial endangerment to health and the environment. The violations are established in files of the RWQCB for DEFENDANT's sewage collection system, as well as in studies conducted by DEFENDANT in compliance with orders from regulatory agencies. The enumerated violations are detailed in the RCRA Notice designating the section of the RCRA violated by the described activity.

VII. FIRST CLAIM FOR RELIEF

**Violation of CWA - 33 U.S.C. § 1251 *et seq.*, 33 U.S.C. §§ 1342 (a) and (b)
and 33 U.S.C. § 1311**

Discharge of Pollutants from Point Sources to United States Waters

RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 39 above including the CWA Notice as though fully set forth herein. **RIVER WATCH** is informed and believes and based upon such information and belief alleges as follows:

40. DEFENDANT has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source without an NPDES Permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

41. The violations of DEFENDANT as alleged in this Complaint are ongoing and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by DEFENDANT to the RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary to address DEFENDANT's violations of the CWA which may occur after the filing of this Complaint. Each violation of a NPDES Permit is a separate violation of the CWA.

42. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANT will continue to violate the CWA with respect to the enumerated discharges and releases as alleged herein. Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect those members' interests which are or may be adversely affected by DEFENDANT's violations of the CWA.

VIII. SECOND CLAIM FOR RELIEF

Violations of RCRA - 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(A)

RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 42 above including the RCRA Notice as though fully set forth herein. RIVER WATCH is informed and believes and based upon such information and belief alleges as follows:

43. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person who violates a permit, standard or regulation pursuant to the RCRA. Civil penalties may be assessed against any person or entity in violation of this section, pursuant to 42 U.S.C. §§ 6928 (a) and (g).

44. DEFENDANT's storage and handling of untreated sewage, defined as a hazardous waste under the RCRA, has caused the discharge of hazardous wastes to soil and groundwater in violation of regulations regarding the use and disposal of hazardous wastes. [RCRA §3004(d), 42 U.S.C. §6924(d)] .

1 45. RIVER WATCH avers and believes and on such belief alleges that without the
2 imposition of appropriate civil penalties and the issuance of appropriate equitable relief,
3 DEFENDANT will continue to violate a permit, standard or regulation pursuant to the RCRA,
4 specifically RCRA § 3004(d), 42 U.S.C. §6924(d).

5 46. Continuing acts or failure to act by DEFENDANT to address these violations will
6 irreparably harm RIVER WATCH for which harm RIVER WATCH has no plain, speedy or
7 adequate remedy at law.

8 **IX. THIRD CLAIM FOR RELIEF**

9 **Violation of RCRA - 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(B)**

10 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
11 1 through 46 above including the RCRA Notice as though fully set forth herein. RIVER
12 WATCH is informed and believes and based upon such information and belief alleges as
13 follows:

14 47. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may
15 commence a civil action against any person or governmental entity including a past or present
16 generator, transporter, owner or operator of a treatment, storage or disposal facility who has
17 contributed to the past or present handling, storage, treatment, transportation, or disposal of any
18 solid or hazardous waste which may present an imminent and substantial endangerment to health
19 or to the environment.

20 48. DEFENDANT operates, has operated, oversees or has overseen the operation of
21 its sewage collection system in a manner which has allowed untreated sewage to be discharged
22 into soil and groundwater adjacent to its sewer pipelines.

23 49. The pollutants in untreated sewage are known to be hazardous to the environment
24 and human health if released into the environment in sufficient quantity pose an imminent and
25 substantial risk.

26 50. For purposes of the RCRA, untreated sewage is a "solid waste" and a "hazardous
27 waste" within the meaning of the statute.

1 51. RIVER WATCH is informed and believes, and on such belief alleges, that
2 amounts of untreated sewage discharged from DEFENDANT's sewage collection system are
3 in sufficient quantity to pose an imminent and substantial risk to both the environment and
4 human health.

5 52. Continuing acts or failure to act by DEFENDANT to address these violations will
6 irreparably harm RIVER WATCH for which harm RIVER WATCH has no plain, speedy or
7 adequate remedy at law.

8 **X. PRAYER FOR RELIEF**

9 RIVER WATCH prays this Court grant the following relief:

10 53. Declare DEFENDANT to have violated and to be in violation of the CWA;

11 54. Issue an injunction ordering DEFENDANT to immediately operate its sewage
12 collection system in compliance with the CWA;

13 55. Order DEFENDANT to pay civil penalties of per violation/per day for its
14 violations of the CWA;

15 56. Order DEFENDANT to pay the reasonable attorneys' fees and costs of RIVER
16 WATCH (including expert witness fees), as provided by 33 U.S.C. § 1365(d), and applicable
17 California law;

18 57. Declare DEFENDANT to have violated and to be in violation of the RCRA for
19 discharging pollutants and hazardous wastes from its sewage collection system in sufficient
20 quantity to pose an imminent and substantial risk to health and to the environment;

21 58. Enjoin DEFENDANT from collecting, storing and conveying untreated sewage
22 in a manner which poses an imminent and substantial risk to health and the environment;

23 59. Issue an injunction ordering DEFENDANT to immediately comply with the
24 substantive and procedural requirements of the RCRA;

25 60. Order DEFENDANT to pay civil penalties, pursuant to provisions of the RCRA,
26 including 42 U.S.C §§ 6928 (a) and (g) and/or pay for remediation projects to redress harm
27 caused by DEFENDANT's violations of the RCRA. Each of the above-described violations of
28 the RCRA subjects the violator to civil penalties on a per day per violation basis. Civil penalties

Exhibit A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbeglobal.net



January 23, 2012

***Via Certified Mail -
Return Receipt Requested***

Head Of Operations
County Sanitation District No. 2-3 of Santa Clara
20833 Stevens Creek Blvd., Suite 104
Cupertino, CA 95014

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Head of Operations:

NOTICE

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), [33 U.S.C. § 1365(a),] a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter serves as notice on behalf of Northern California River Watch ("River Watch") that River Watch hereby places County Sanitation District No. 2-3 of Santa Clara, ("the District") on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the District for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), [33 U.S.C. § 1365(a)(1),] the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance with the CWA by the District, identified and outlined below.

INTRODUCTION

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under an National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA § 402, which allows the discharge of designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized

exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates, satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (SWRCB) and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region (RWQCB).

The District is located within 2 unincorporated areas that are surrounded by the City of San Jose. The District is governed by the Santa Clara County Board of Supervisors. The District provides sanitary sewer services to approximately 8 square miles, with approximately 90 miles of sewer lines and 7,000 connections. Wastewater collected within the District flows to the City of San Jose's treatment facilities for treatment and disposal. The District contracts with the City of San Jose and pays its proportionate cost for use of the city-owned sewer lines between the District and the treatment plant, and for the treatment and disposal of waste. The District does not have any employees of its own. Management services are provided by contract with an engineering consulting firm. Sanitary sewer maintenance work is provided by contract with service providers.

The average daily flow is approximately 1.5 mgd. The District has stated that the existing system has the capacity to accommodate growth and infill development within the existing boundaries. The District provides services to residential, commercial and industrial customers.

The District has a history of sewer system overflows (SSOs) from its aging sewer lines. As recorded in the SWRCB, California Integrated Water Quality System (CIWQS) Interactive SSO Reports, the District's collection system has experienced 88 SSOs between June 2007 and November 2011, with a combined volume of 139,628 gallons - 102,655 gallons of which reached surface waters.

For example, on April 15, 2011 there was a spill of reported volume of 4,500 gallons of untreated waste water from a District-owned sewer main at 10793 Miguelita Road in San Jose, all of which discharged to a nearby surface water. On September 3, 2011 there was a spill of reported volume of 6,000 gallons of untreated waste water from a District-owned sewer main at 10251 Claudia Drive in San Jose, 5,900 gallons of which discharged to a nearby surface water.

Structural defects in the District's collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Coyote Creek, Guadalupe River and South San Francisco Bay, all waters of

the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage.¹ River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The District's chronic collection system failures pose a substantial threat to public health.

Any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

Discharges by the District as described herein constitute a nuisance. These discharges are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal or treatment of wastes.

The District's collection system operations are not regulated under a NPDES Permit, but are currently regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ ("Statewide WDR") adopted on May 2, 2006.

The District's illegal discharge of untreated wastewater is a significant contribution to the degradation of South San Francisco Bay and tributary waters such as Coyote Creek, with serious adverse effects on the beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the District's operation of its collection system into compliance with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

¹ See the July, 2008 Report of the Human Marker Study conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of raw sewage from the District's collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the SWRCB's CIWQS SSO Public Reports and other public documents in the District's possession or otherwise available to the District, and incorporates by reference records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations is the County Sanitation District No. 2-3 of Santa Clara, identified throughout this Notice as the "District".

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the District which relate to the District's sewage collection system as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB as to the District for the period from January 9, 2007 to January 9, 2012, therefore, the range of dates covered by this Notice is January 9, 2007 to January 9, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, E-mail US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

VIOLATIONS

River Watch contends that from January 9, 2007 to January 9, 2012, the District has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its collection systems without a NPDES permit. The below-listed violations are reported by the RWQCB staff, and evidenced by the

SWRCB's CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

<u>Violations</u>	<u>Description</u>
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- | | |
|-------------|--|
| 1800 | Collection system overflows caused by underground exfiltration. This is an event in which untreated sewage is discharged from the collection system prior to the reaching the wastewater treatment plant. Underground discharges are alleged to have been continuous throughout the 5 year period from January 9, 2007 to January 9, 2012. Evidence to support the allegation of underground discharge of raw sewage exists in the District's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the San Jose treatment plant reported in the District's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks, wetlands and the South Bay for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine. |
| 125 | SSOs. As evidenced in the SWRCB's CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents. |

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the District into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the District's ongoing non-compliance with the CWA:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. The amendment of the Risk Assessment Plan in the District's Sewage System Management Plan, to specify that defective sewer lines located within 150 feet of surface waters, including drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet of surface waters. Said prioritization will be consistent with information provided by the District's Flow Monitoring and Inflow/Infiltration Study completed in June 2009. The District's CCTV Program shall prioritize the televising of sewer lines identified by the Flow Monitoring and Inflow/Infiltration Study completed in 2009 as necessary to assess the exact location of I/I sources.
 - b. The provision of funding in the District's Capitol Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years, and lines constructed, replaced or repaired within the prior 20 years.

2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years.
 - c. A change of the use of the structure served (1) from residential to non-residential uses, (2) to a non-residential use which will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than 3 years.
 - d. Upon replacement or repair of any part of the sewer lateral.
 - e. Upon issuance of a building permit with a valuation of \$25,000.00 or more.
 - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
4. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the District's web site to the SWRCB's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
5. Performance of human marker sampling on creeks, rivers, wetlands and areas of South San Francisco Bay and its tributaries adjacent to sewer lines, to test for sewage contamination from underground exfiltration.

CONTACT INFORMATION

River Watch has retained legal counsel to with respect to the issues raised and violations of RCRA as alleged in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
Jerry Bernhaut, Esquire
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675

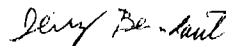
CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. The members' health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the District for the violations alleged in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the District wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Santa Clara County Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code 3213A
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-100

Exhibit B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



January 23, 2012

VIA REGISTERED MAIL -

Head of Operations
County Sanitation District No. 2-3 of Santa Clara
20833 Stevens Creek Blvd. Suite 104
Cupertino, CA 95014

**Re: Notice of Violations and Intent to File Suit under the Resource
Conservation and Recovery Act**

NOTICE

Dear Head of Operations,

On behalf of Northern California River Watch and its members ("River Watch,") I am providing statutory notification to County Sanitation District No. 2-3 of Santa Clara ("the District") of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6901 *et seq.*, by reason of the District's operation of its sewage collection system described in this Notice.

The RCRA requires that 60 days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency (EPA) and the State in which the violation is alleged to have occurred (see also 40 CFR §§ 254.2 and 254.3). However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (sub-chapter 111.42 U.S.C. § 6921 *et seq.*). Certain violations of California Title 22 may also be violations of RCRA Subtitle C.

The RCRA also requires that a private party provide 90 days prior notice to the alleged violator, the Administrator of the EPA and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (sub-chapter 111.42 U.S.C. § 6921 *et seq.*).

Sub-chapter C of the RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in any manner which may create a danger to human health or to the environment.

As discussed in this Notice, River Watch contends the District is routinely violating the RCRA's regulatory mandates applicable to hazardous or solid wastes by causing untreated sewage, a hazardous waste under the RCRA, to be discharged or deposited where it is or probably or will be discharged into waters of the State, thereby creating or threatening to create, conditions of pollution or nuisance, (42 U.S.C. § 6972(a)(1)(A)). River Watch further contends the District is routinely violating the RCRA's prohibition against creating an imminent and substantial endangerment to human health and the environment by the operation of its sewage collection system which has caused contamination of soil, groundwater and surface water with fecal coliform and other pathogens, (42 U.S.C. § 6972(a)(1)(B)).

River Watch alleges the District's mishandling of wastes in violation of Sub-chapter C of the RCRA has created and is creating an imminent and substantial endangerment to human health or the environment. River Watch alleges violations of Sub-chapter C with regard to both a violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA (including California Title 22), as well as violations creating imminent and substantial endangerment to human health or the environment.

River Watch hereby notifies the District that at the expiration of the appropriate notice periods under RCRA, River Watch intends to commence a civil action against the District on the following grounds:

1. The District has been operating and continues to operate a sewage collection system with aging, structurally defective sewer lines that experience sewer system surface overflows (SSOs) and underground exfiltration causing contamination of groundwater and surface waters. The District's failure to adequately maintain its sewage collection system has violated and continues to violate a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA, (42 U.S.C. § 6972(a)(1)(A)).
2. The District's failure to adequately maintain its sewage collection system and resultant discharges of untreated sewage to soil, groundwater and surface water have created and continue to create an imminent and substantial endangerment to human health or the environment, (42 U.S.C. § 6972(a)(1)(B)).
3. The District's failure to adequately maintain its sewage collection system and resultant discharges of untreated sewage to soil, groundwater and surface water has violated and continues to violate Subtitle C of RCRA sub-chapter 111, 42 U.S.C. § 6921 *et seq.*

Under 42 U.S.C. § 6972(a)(1)(A), Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA, shall include sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been

violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

1. The specific standard, limitation, or order alleged to have been violated.

The RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. Its goals are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes. RCRA § 3005 [42 U.S.C. § 6925,] requires facilities to obtain permits for the handling, storage, treatment, transportation and/or disposal of hazardous waste. RCRA § 3004 [42 U.S.C. § 6924,] requires owners and operators of hazardous waste treatment, storage, and disposal facilities to follow enumerated standards. These requirements are enumerated in 40 CFR Part 264 and include requirements for General Facility Standards (Subpart B), Preparedness and Prevention (Subpart C), Contingency Plans and Emergency Procedures (Subpart D), Releases from Solid Waste Management Units (Subpart F), Closure and Post-Closure (Subpart G), and Financial Requirements (Subpart H),

Waste management regulations mandated by the EPA are codified at 40 CFR §§ 239-282. Regulations regarding management of hazardous waste begin at 40 CFR § 260. Pursuant to the RCRA, the State of California has enacted laws and promulgated regulations which are at least as stringent as the federal regulations.

The District's' storage and conveyance of untreated sewage wastes identified in the BACKGROUND section of this Notice, and the unpermitted discharge of those wastes as described in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding hazardous waste - 42 U.S.C. § 6972(a)(1)(A).

The District's' operation of its sewage collection system identified in the BACKGROUND section of this Notice has caused contamination of soil, groundwater, surface waters and residential areas with human pathogens which contamination presents an imminent and substantial endangerment to human health and the environment. The District owns and is responsible for the maintenance of its sewer pipelines which have contributed to the transportation, storage, and disposal of the sewage wastes as described in this Notice. The sewage stored and conveyed by the District's collection system is a solid or hazardous waste under the RCRA. The District is a past and present transporter, owner and operator of facilities which store said solid wastes in the District's sewer pipelines and pump stations. The District's failure to adequately maintain its collection system has created and is creating an imminent and substantial endangerment to human health or the environment - 42 U.S.C. § 6972(a)(1)(B).

2. The Activity Alleged to Constitute a Violation

To comply with this requirement, River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary, the RCRA requires that the environment and public be protected from solid or hazardous wastes, such as the untreated sewage, including industrial and commercial as well as residential sewage,

discharged from the District's sewer pipelines. River Watch alleges that Industrial sewage is exfiltrating from structurally damaged pipelines prior to mixing with domestic sewage. The pollutants found in the discharge of untreated sewage identified in this Notice constitute solid or hazardous waste under the RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated. The RCRA specifically protects groundwater. The liability of the District stems from its ownership and responsibility for operation and maintenance of its sewage collection system.

3. The discharger responsible for the alleged violation.

The discharger responsible for the alleged violations is the entity to whom this letter is addressed, County Sanitation District No. 2-3 of Santa Clara, identified throughout this Notice as the "District".

4. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.

River Watch has examined records of the Regional Water Quality Control Board (RWQCB) for the period from January 9, 2007 to January 9, 2012, therefore, the range of dates covered by this Notice is January 9, 2007 to January 9, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice.

The violations identified in this Notice such as discharging pollutants to groundwater and surface waters, failure to obtain RCRA-authorized permits, failure to implement the requirements of the RCRA, failure to meet water quality objectives, etc., are continuous. Therefore each day is a violation. River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in the District's own records (or lack thereof) or files and records of other agencies including the RWQCB.

5. The full name, address, and telephone number of the person giving notice.

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, E-mail US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

BACKGROUND

County Sanitation District No. 2-3 is located within 2 unincorporated areas surrounded by the City of San Jose. The District is governed by the Santa Clara County Board of Supervisors. The District provides sanitary sewer services to approximately 8 square miles, with approximately 90 miles of sewer lines and 7,000 connections. Wastewater collected within the District flows to the City of San Jose's treatment facilities for treatment and disposal. The District contracts with the City of San Jose, and pays its proportionate cost for use of the city-owned sewer lines between the District and the treatment plant, and for

the treatment and disposal of waste. The District does not have any employees of its own. Management services are provided by contract with an engineering consulting firm. Sanitary sewer maintenance work is provided by contract with service providers.

The average daily flow is approximately 1.5 mgd. The Discharger has stated that the existing system has the capacity to accommodate growth and infill development within the existing boundaries. The Discharger provides services to residential, commercial and industrial customers. The District has a history of SSOs from its aging sewer lines. As recorded in the California Integrated Water Quality System ("CIWQS") Interactive SSO Reports, the Discharger's collection system has experienced 88 SSOs between June, 2007 and November, 2011, with a combined volume of 139,628 gallons - 102,655 gallons of which reached surface waters. For example, on April 15, 2011 there was a spill of reported volume of 4,500 gallons of untreated waste water from a District-owned sewer main at 10793 Miguelita Road in San Jose, all of which discharged to a nearby surface water. On September 3, 2011 there was a spill of reported volume of 6,000 gallons of untreated waste water from a District-owned sewer main at 10251 Claudia Drive in San Jose, 5,900 gallons of which discharged to a nearby surface water.

Structural defects in the District's collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Coyote Creek, Guadalupe River and South San Francisco Bay, all waters of the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage.¹ River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The District's chronic collection system failures pose a substantial threat to public health.

Discharges by the District as described herein constitute a nuisance. These discharges are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of the storage, transportation or disposal of wastes.

¹ See the July, 2008 Report of the Human Marker Study conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

The District's illegal discharge of untreated wastewater is a significant contribution to the degradation of South San Francisco Bay and its tributary waters such as Coyote Creek, with serious adverse effects on the beneficial uses of those waters. River Watch members residing in the area have a vital interest in bringing the operation of the District's collection system into compliance with the RCRA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the District into compliance with the RCRA, and reflect the biological impacts of the District's ongoing non-compliance:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. The amendment of the Risk Assessment Plan in the District's Sewage System Management Plan to specify that defective sewer lines located within 150 feet of surface waters, including drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet of surface waters. Said prioritization will be consistent with information provided by the District's Flow Monitoring and Inflow/Infiltration Study completed in June 2009. The District's CCTV Program shall prioritize the televising of sewer lines identified by the Flow Monitoring and Inflow/Infiltration Study completed in 2009 as necessary to assess the exact location of I/I sources.
 - b. The provision of funding in the District's Capitol Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years and lines constructed, replaced or repaired within the prior 20 years.
2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years.
 - c. A change of the use of the structure served (1) from residential to non-residential use (2) to a non-residential use that will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than 3 years.
 - d. Upon replacement or repair of any part of the sewer lateral.

- e. Upon issuance of a building permit with a valuation of \$25,000.00 or more.
 - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
 4. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the District's web site to the SWRCB's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
 5. Performance of human marker sampling on creeks, rivers, wetlands and areas of South San Francisco Bay adjacent to sewer lines, to test for sewage contamination from underground exfiltration.

REGULATORY STANDARDS

Maximum Contaminant Levels and Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The RWQCB has adopted a Water Quality Control Plan or Basin Plan which designates all surface and groundwater within the Bay Area regions as capable of supporting domestic water supply. Sewage has been characterized as "hazardous waste" and "solid waste" within the meaning of the RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of sewage.

Past or current violations of the RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged, as River Watch has alleged in this Notice with respect to the District's sewage collection system. Accordingly, under these provisions, persons or entities violating the RCRA are subject to substantial liability to the United States on a per-day basis.

VIOLATIONS

River Watch alleges that between January 9, 2007 and January 9, 2012 ongoing violations of the RCRA with respect to the District's sewage collection system as described in this Notice have occurred. The District has caused or permitted, causes or permits, or threatens to cause or permit hazardous waste to be discharged into waters of the State and now creates, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharges and threatened discharges are permanently abated.

River Watch alleges that the District's disposal, storage and conveyance of sewage wastes in its sewage collection systems between January 9, 2007 and January 9, 2012 has allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California hazardous waste regulatory programs.

Although the RCRA is a strict liability statute, the violations of the RCRA alleged in this Notice are knowing and intentional in that the District in the past has stored and conveyed hazardous substances, in the form of untreated sewage, in pipelines which the District knew to be damaged to the extent that it was unable to contain the sewage and avoid leakage into soil and groundwater. River Watch alleges the District has known of the contamination of soil and groundwater since at least 2007, and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to its sewer pipelines, and to continually contaminate and re-contaminate actual and potential sources of drinking water in addition to surface waters.

Violations of the RCRA of the type alleged herein are a major cause of the continuing decline in water quality, and pose a continuing threat to existing and future drinking water supplies of California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of the RCRA by the District evidenced by information which becomes available to River Watch after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violations.

CONTACT INFORMATION

River Watch has retained legal counsel to with respect to the issues raised and violations of RCRA as alleged in this Notice. All communications should be addressed to:

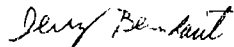
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Santa Rosa, CA 95402-5469
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CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. The members' health, use and enjoyment of this natural resource is specifically impaired by the District's violations of the RCRA as set forth in herein.

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the RCRA. At the close of the appropriate notice periods or shortly thereafter, River Watch intends to file suit against the District under the provisions of the RCRA for each of the violations alleged in this Notice. During the 90-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the District wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 90-day notice period ends.

Very truly yours,



Jerry Bernhaut

JB:lhmm

cc: Santa Clara County Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

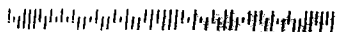
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